

**Deposition Designations for:
JAY HUGHES
June 11, 2009**

Deposition Designation Key

**Arrowood = Arrowood Indem. Co.
f/k/a Royal Indem. Co. (Light Green)**

BNSF = BNSF Railway Co. (Pink)

**Certain Plan Objectors “CPO” = Government Employees Insurance Co.; Republic Insurance Co.
n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance
Co.; Fireman’s Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurtà; and Allianz
SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich
International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and
related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal
Belge SA (Orange)**

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

**FFIC = Fireman Funds Ins. Co. (Green)
FFIC SC = Fireman Funds Ins. Co. “Surety Claims” (Green)**

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors’ Committee & Bank Lenders Group (Lavender)

**AFNE = Assume Fact Not in
Evidence
AO = Attorney Objection
BE = Best Evidence
Cum. = Cumulative
Ctr = Counter Designation
Ctr-Ctr = Counter-Counter
ET = Expert Testimony
F = Foundation
408 = Violation of FRE 408
H = Hearsay
IH - Incomplete Hypothetical**

**L = Leading
LA = Legal Argument
LC = Legal Conclusion
LPK - Lacks Personal Knowledge
LO = Seeking Legal Opinion
NT = Not Testimony
Obj: = Objection
R = Relevance
S = Speculative
UP = Unfairly Prejudicial under Rule 403
V = Vague**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE
- - -

In Re: : Chapter 11
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
: (Jointly
Debtors : Administered)

- - -
Thursday, June 11, 2009
- - -

Oral deposition of JAY W.
HUGHES, JR., ESQUIRE, taken pursuant to
notice, was held at the offices of
KIRKLAND & ELLIS, 665 Fifteenth Street,
NW, Washington, DC 20005, commencing at
9:07 a.m., on the above date, before Lori
A. Zabielski, a Registered Professional
Reporter and Notary Public in and for the
Commonwealth of Pennsylvania.

- - -
MAGNA LEGAL SERVICES
Seven Penn Center
1635 Market Street
8th Floor
Philadelphia, Pennsylvania 19103

Page 10

Page 12

1	---	
2	EXHIBITS	
3	---	
4	NO. DESCRIPTION	PAGE
5	Hughes-1	
6	Monthly Asbestos Litigation	
7	Summary - March	86
8	Hughes-2	
9	Letter dated 3/27/01 to	
10	Allan McGarvey from Terry	
11	MacDonald	168
12	Hughes-3	
13	Exhibit 4 to Exhibit Book	
14	Trust Distribution Procedures	211
15	Hughes-4	
16	Documents bearing Bates stamps	
17	GCO 000023 through 000026	242
18	Hughes-5	
19	Documents bearing Bates stamps	
20	GCO 000081 through 000091	254
21	Hughes-6	
22	Document bearing Bates stamp	
23	GCO 000174	257
24	Hughes-7	
25	Documents bearing Bates stamps	
26	GCO 000111 through 000112	275
27	Hughes-8	
28	Document bearing Bates stamp	
29	GCO 000173	280
30	Hughes-9	
31	Document bearing Bates stamp	
32	GCO 000140	281

1	---	
2	DEPOSITION SUPPORT INDEX	
3	---	
4		
5	Direction to Witness Not to Answer:	
6	Page Line	Page Line
7	408 22	
8		
9		
10	Request for Production of Documents:	
11	Page Line	Page Line
12	NONE	
13		
14		
15	Stipulations:	
16	Page Line	Page Line
17	NONE	
18		
19		
20	Area(s) Marked Confidential:	
21	Page Line	Page Line
22		
23	(Mr. Speights dropped of	
24	teleconference from:)	
25	285 01 to 299 24	

Page 11

Page 13

1	EXHIBITS (continued)	
2	---	
3	NO. DESCRIPTION	PAGE
4	Hughes-10	
5	Documents bearing Bates stamps	
6	GCO 000207 through 000215	282
7	Hughes-11	
8	Letter dated 4/25/09 to Counsel	
9	from Barbara Harding with	
10	attachment	296
11	Hughes-12	
12	Exhibit 6 to Exhibit Book	
13	Asbestos Insurance Transfer	
14	Agreement	299
15	Hughes-13	
16	Document bearing Bates stamp	
17	GCO 000219	362
18	Hughes-14	
19	Documents bearing Bates stamps	
20	GCO 000199 through 000200	367
21	Hughes-15	
22	Exhibit 5 to Exhibit Book	
23	Schedule of Settled Asbestos	
24	Insurers Entitled to 524(g)	
25	Protection	479

1	---	
2	PROCEEDINGS	
3	---	
4	MR. LEWIS: Federal rules.	
5	---	
6	JAY W. HUGHES, JR., ESQUIRE,	
7	after having been first duly	
8	sworn, was examined and testified	
9	as follows:	
10	---	
11	EXAMINATION	
12	---	
13	BY MR. LEWIS:	
14	Q. Good morning, Mr. Hughes.	
15	My name is Tom Lewis. We met sometime	
16	ago when we were negotiating on some	
17	settlements out of Libby, Montana.	
18	Do you recall that?	
19	A. Yes, I do.	
20	Q. What's your full name?	
21	A. Jay, J-A-Y, W. Hughes, Jr.	
22	Q. Who is your employer?	
23	A. W.R. Grace & Company.	
24	Q. And what is your position	

4 (Pages 10 to 13)

Page 14

Page 16

1 with W.R. Grace?

2 A. I am a senior litigation
3 counsel in the legal department.

4 Q. How long have you held that
5 position?

6 A. I have had that title
7 probably since 1991.

8 Q. When asbestos claims began
9 accumulating against Grace in the '80s
10 and '90s right up until the time of the
11 bankruptcy, what was your role with
12 respect to those claims?

13 A. I was responsible for the
14 day-to-day management and resolution of
15 the asbestos personal injury claims filed
16 against the company.

17 Q. Who was your -- or who were
18 your supervisors at that time, your
19 direct reports?

20 A. Since 1991, my supervisor
21 was the general counsel, Bob Beber. Bob
22 retired in 1998. In 1998, David Siegel
23 became general counsel. I reported to
24 Dave. Dave retired in -- well, it was

CPO

CPO

PP
Obj:
R

1 Q. Were you involved with
2 resolution disputes with insurers during
3 your time as senior litigation counsel
4 assigned to the asbestos claims?

5 A. Yes.

6 Q. How would you describe your
7 role in those insurance dispute
8 resolutions, by settlement, I assume,
9 primarily, right? That's a compound
10 question.

11 MS. HARDING: Object to
12 form.

13 MR. LEWIS: I will rephrase
14 the question.

15 BY MR. LEWIS:

16 Q. How were you involved in
17 resolving the disputes with the insurance
18 companies?

19 A. Well, my primary role
20 involved what I would refer to as
21 post-settlement or post-resolution
22 disputes with insurance carriers. I
23 wasn't directly involved, although I was
24 obviously consulted because of my

Page 15

Page 17

1 after bankruptcy -- in 2005. Mark
2 Shelnitz became general counsel. And at
3 some point after Shelnitz became the
4 general counsel, Richard Finke became
5 assistant general counsel for litigation,
6 and I reported to Richard since then.

7 Q. We have taken the deposition
8 of Mr. Finke. What documents have you
9 reviewed to prepare to testify in this
10 30(b)(6) deposition?

11 A. I've reviewed the deposition
12 transcripts of Mr. Finke, of Mr. Posner,
13 and I have taken a look at the Trust
14 Distribution Procedures, the Trust
15 Agreement, and some other insurance
16 agreements, just to kind of refresh my
17 recollection about the issues that I am
18 testifying about.

19 Q. Have you reviewed any
20 written communications between insurers
21 and Grace relating to resolution of
22 disputes with insurance carriers in
23 preparation for this deposition?

24 A. No.

CPO

PP
Obj:
R

1 involvement in the underlying asbestos
2 personal injury cases. I wasn't
3 generally involved in the coverage
4 litigation between Grace and coverage
5 disputes and the insurance carriers.

6 I have had a much greater
7 involvement in certain disputes that
8 arose based on what I would call the kind
9 of execution and implementation of the
10 insurance and agreements and settlement
11 agreements and coverage in place
12 agreements and reimbursement agreements.

13 MS. HARDING: Wait one
14 second. To everybody that's on
15 the phone, could everybody please
16 mute their lines while the
17 questioning is going on here in
18 the room. We hear a lot of
19 rustling and talking and things.
20 So please put your phones on mute.
21 Thank you.

22 MS. ALCABES: Barbara, if
23 the witness could speak up a
24 little bit, it would be helpful.

Page 18

Page 20

1 too. Thanks.

2 MS. HARDING: The witness is
3 talking pretty loudly, so there is
4 not a whole lot we can do about
5 that. Sorry.

6 MR. LEWIS: Can you hear me?

7 MS. ALCABES: Yes.

8 MR. LONGOSZ: Yes.

9 MS. HARDING: All right.

10 Thank you.

11 BY MR. LEWIS:

12 Q. Did you review your prior
13 depositions or testimony relating to the
14 Grace bankruptcy to prepare for this
15 deposition?

16 A. Yes, I did.

17 Q. How many times have you been
18 deposed with respect to the bankruptcy,
19 once?

20 A. Twice before today.

21 Q. Okay. I have one
22 deposition. Where were you deposed the
23 first time?

24 A. The first time I was deposed

Page 19

1 in the fraudulent conveyance lawsuit,
2 which was an adversary proceeding, I
3 believe, in the bankruptcy, and that took
4 place in 2002. And then I was deposed in
5 2007 in connection with the personal
6 injury estimation trial.

7 Q. Did you testify on behalf of
8 Grace in the estimation trial?

9 A. No, I didn't.

10 Q. Well, I don't want to cover
11 that. I have been through that
12 deposition.

13 And I think what you are
14 referring to when you talk about
15 post-settlement disputes, just generally,
16 you were talking about arranging for
17 audits, reporting to settled insurers,
18 and this sort of thing; is that generally
19 correct?

20 A. Yes, documenting settlements
21 and issues that arose in terms of Grace's
22 documentation of payment, in terms of
23 reimbursements under the agreement.

24 Q. One of the interesting

1 things to the Libby counsel that it
2 involved when we became involved in this
3 case was the way insurance was --

4 MR. SCHIAVONI: Objection to
5 form.

6 MS. HARDING: He didn't ask
7 a question.

8 MR. LEWIS: Let me finish
9 the question.

10 MR. SCHIAVONI: I wanted to
11 give you a chance to start over.

12 MR. LEWIS: What did you
13 say, sir?

14 MR. SCHIAVONI: I was giving
15 you an opportunity to start over.

16 MR. LEWIS: Just let me
17 complete my question. My question
18 is going to be pretty benign. I
19 just want to get this witness to
20 another subject. And you can make
21 your objection, and we will
22 proceed.

23 BY MR. LEWIS:

24 Q. When we got in the case, we

Page 21

1 made interrogatory requests early on in
2 all of our cases, inquiring as to whether
3 there was liability insurance available
4 to Grace to resolve these claims, and the
5 answer we got was generally, don't worry
6 about it, we have got enough money, you
7 don't need to know about insurance. And
8 no insurance information was provided.

9 MR. SCHIAVONI: Objection.

10 MR. LEWIS: I am not done.

11 Okay.

12 MR. SCHIAVONI: You are
13 giving a speech. You are not
14 asking a question.

15 BY MR. LEWIS:

16 Q. Do you recall that sort of
17 response early on?

18 MS. HARDING: Object to
19 form. I would have to --

20 MR. SCHIAVONI: Object to
21 form.

22 THE WITNESS: I would have
23 to see a response. I am familiar
24 with our discovery responses

Page 26

1 MS. HARDING: I am not
2 telling him not to answer. I am
3 just stating my objection.

4 MR. LEWIS: Thank you. Are
5 you done?

6 MS. HARDING: Yes.

7 MR. SCHIAVONI: Counsel, you
8 are asking for a legal conclusion,
9 point-blank. It's obvious. You
10 can certainly say otherwise, but
11 that's what you are asking for.
12 We object. And stop making
13 speeches. Just answer [sic]
14 questions.

15 MR. LEWIS: I think you
16 should keep your composure and not
17 get so upset, Counsel. I am going
18 to conduct this deposition. You
19 can object, and we will proceed.
20 Okay?

21 All right. Read back the
22 last question, please.

23 (The reporter read from the
24 record as requested.)

CPO

Page 28

1 THE WITNESS: Yes.

2 BY MR. LEWIS:

3 Q. For example, you settle
4 cases in a multitude of states, correct?

5 A. Yes.

6 MS. HARDING: Just object to
7 form in terms of you.

8 But go ahead.

9 BY MR. LEWIS:

10 Q. When I say "you," I am
11 referring to you on behalf of Grace.

12 If you want me to use Grace,
13 I will use Grace. Would that be better?
14 I will use Grace if that bothers you so
15 much.

16 Were you mindful of what
17 jurisdiction or even venue you were in
18 when you evaluated cases for settlement?

19 A. Yes.

20 Q. And why is that?

21 A. Well, I think there
22 obviously can be legal distinctions in
23 terms of the law with respect to personal
24 injury cases that would be relevant to

PP
Obj:
R

Page 27

1 BY MR. LEWIS:

2 Q. With that preface --

3 MR. SCHIAVONI: I object.
4 If you are going to incorporate
5 your statements about the law in
6 questions, it's just
7 objectionable. And you are a very
8 experienced trial lawyer. You
9 know that. You know better.
10 Objection to form.

11 MR. LEWIS: Are you finished
12 with your objection?

13 Okay.

14 BY MR. LEWIS:

15 Q. With that preface and
16 acknowledging your objection, was it
17 important to you in your role in settling
18 these cases that you have a passing
19 knowledge of the laws of the various
20 states in which the cases were brought?

21 MS. HARDING: Object to
22 form.

23 MR. SCHIAVONI: Objection to
24 form.

CPO

Page 29

1 the value of the case. And also there
2 are differences in historical verdicts,
3 the amount of the verdicts in a case, so
4 the jurisdiction would be relevant there
5 as well.

6 Q. For example, whether there
7 is joint and several liability in a state
8 or not might impact your valuation of the
9 settlement; is that true?

10 A. Yes.

11 Q. What factors did you
12 consider in evaluating a case for
13 settlement?

14 A. Well, I think I have
15 testified in both of my prior depositions
16 in this case in a fairly detailed manner
17 on that question.

18 But I think the same types
19 of factors that any individual involved
20 in resolving asbestos cases, specifically
21 in personal injury cases, generally the
22 quality of the evidence in terms of the
23 exposure of the particular plaintiff to
24 Grace's products, the particular

PP
Obj:
R

<p>CPD</p> <p>1 individual in terms of his age, the</p> <p>2 seriousness of the disease. In the</p> <p>3 asbestos arena, there is a distinction</p> <p>4 between, say, lung cancer and</p> <p>5 mesothelioma. Primarily it is due to the</p> <p>6 fact that lung cancer, there are</p> <p>7 established alternative causes to it.</p> <p>8 And those are -- that's kind of an</p> <p>9 overview.</p> <p>10 Q. Would the nature and extent</p> <p>11 of the exposure in most cases be of</p> <p>12 paramount importance to you in evaluating</p> <p>13 a case for settlement?</p> <p>14 MS. HARDING: Object to</p> <p>15 form.</p> <p>CPD</p> <p>16 THE WITNESS: I don't know</p> <p>17 if it would be paramount</p> <p>18 importance, but I think that</p> <p>19 certainly the evidence of exposure</p> <p>20 to Grace products was something</p> <p>21 that was one of the primary issues</p> <p>22 in terms of evaluating the case</p> <p>23 against Grace and what it might be</p> <p>24 worth.</p> <p>PP Obj: R</p>	<p>Page 30</p> <p>1 in terms of the percentage of</p> <p>2 asbestos in the products, they</p> <p>3 were overwhelmingly chrysotile.</p> <p>4 The only other asbestos that would</p> <p>5 have been involved would have been</p> <p>6 that which was incidental to the</p> <p>7 vermiculite, if it originated from</p> <p>8 Libby.</p> <p>9 BY MR. LEWIS:</p> <p>10 Q. Was there any other source</p> <p>11 amphibole asbestos besides the asbestos</p> <p>12 that contaminated the vermiculite in</p> <p>13 Libby and products manufactured by Grace?</p> <p>14 MR. SCHIAVONI: Objection,</p> <p>15 no foundation, speculation.</p> <p>16 THE WITNESS: It's fairly</p> <p>17 well-known that chrysotile</p> <p>18 deposits in Quebec, I believe, and</p> <p>19 other parts of the world may have</p> <p>20 some tremolite contamination as</p> <p>21 well. Besides that, I would say</p> <p>22 only the vermiculite and the</p> <p>23 potential for -- Libby vermiculite</p> <p>24 and the potential for Libby</p> <p>Page 32</p>
<p>Page 31</p> <p>1 BY MR. LEWIS:</p> <p>2 Q. What percentage of the</p> <p>3 cases, if you know, that are claims that</p> <p>4 were brought against Grace were primarily</p> <p>5 Monokote exposure cases?</p> <p>6 MS. HARDING: Object to</p> <p>7 form, foundation, and overly</p> <p>8 broad.</p> <p>9 But if you can answer, go</p> <p>10 ahead.</p> <p>11 THE WITNESS: I couldn't</p> <p>12 give a specific percentage, but a</p> <p>13 substantial portion of the cases</p> <p>14 historically involved exposures to</p> <p>15 Monokote 3 and other products to</p> <p>16 which a commercially chrysotile</p> <p>17 asbestos had been added</p> <p>18 commercially.</p> <p>19 BY MR. LEWIS:</p> <p>20 Q. Do you consider the Monokote</p> <p>21 cases as primarily chrysotile cases?</p> <p>22 MS. HARDING: Object to</p> <p>23 form.</p> <p>24 THE WITNESS: I think that</p>	<p>Page 33</p> <p>1 amphibole.</p> <p>2 BY MR. LEWIS:</p> <p>3 Q. So if I suggested that most</p> <p>4 amphibole asbestos used in Grace products</p> <p>5 came from Libby, would you agree or not</p> <p>6 agree with that?</p> <p>7 MS. HARDING: Just object to</p> <p>8 form.</p> <p>9 You can answer.</p> <p>10 THE WITNESS: I don't have a</p> <p>11 basis for agreeing because I don't</p> <p>12 have --</p> <p>13 MR. SCHIAVONI: Objection,</p> <p>14 calls for speculation, no</p> <p>15 foundation.</p> <p>16 MR. LEWIS: I think he was</p> <p>17 saying that, Counsel. But don't</p> <p>18 interrupt the witness again. You</p> <p>19 can make your objections, but</p> <p>20 don't interrupt the witness. I</p> <p>21 don't interrupt the witness.</p> <p>22 Let's have some decorum here.</p> <p>23 Would you like to finish</p> <p>24 your answer, sir?</p>

Page 34	Page 36
<p>1 MR. SCHIAVONI: I think he</p> <p>2 just acknowledged that the</p> <p>3 question called for speculation.</p> <p>4 MR. LEWIS: I think he did,</p> <p>5 but allow him to answer. That was</p> <p>6 a foundational question.</p> <p>7 THE WITNESS: I said I don't</p> <p>8 know enough about the issue of</p> <p>9 contamination -- amphibole</p> <p>10 contamination in chrysotile to</p> <p>11 answer that question.</p> <p>12 BY MR. LEWIS:</p> <p>13 Q. Fair enough.</p> <p>14 Do you have enough</p> <p>15 understanding of the asbestos that was</p> <p>16 generated from Grace's and Zonolite's</p> <p>17 operations in Libby was amphibole?</p> <p>18 MS. HARDING: Object to</p> <p>19 form, generated.</p> <p>20 But go ahead.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. LEWIS:</p> <p>23 Q. Was it all amphibole as far</p> <p>24 as you know?</p>	<p>1 THE WITNESS: But that's not</p> <p>2 what I meant by nature of the</p> <p>3 exposure. By nature of the</p> <p>4 exposure I meant the extent, the</p> <p>5 duration of the exposure and the</p> <p>6 extent to which the activity that</p> <p>7 was involved in terms of was the</p> <p>8 individual applying our product,</p> <p>9 was he working in a work space</p> <p>10 where someone else was applying</p> <p>11 it, did they mix our product.</p> <p>12 That's what I am talking about,</p> <p>13 the kind of factors that an</p> <p>14 industrial hygienist would use in</p> <p>15 assessing the nature of the</p> <p>16 exposure and the risk to the</p> <p>17 worker, who was the plaintiff.</p> <p>18 BY MR. LEWIS:</p> <p>19 Q. Another factor you talked</p> <p>20 about was the quality of the evidence.</p> <p>21 What did you mean by that?</p> <p>22 A. What I meant is that if</p> <p>23 there were -- in a typical asbestos</p> <p>24 personal injury case, you might have</p>
Page 35	Page 37
<p>1 MS. HARDING: Object to</p> <p>2 form.</p> <p>3 MR. SCHIAVONI: No</p> <p>4 foundation, calls for speculation.</p> <p>5 We have a lawyer testifying here,</p> <p>6 not a fact witness from Libby or a</p> <p>7 scientist or anything else.</p> <p>8 MR. LEWIS: Go ahead and</p> <p>9 answer.</p> <p>10 THE WITNESS: Well, I was</p> <p>11 going to start by saying what</p> <p>12 counsel down the table just said.</p> <p>13 But my understanding is</p> <p>14 amphibole, but I am not a</p> <p>15 mineralogist and I don't have that</p> <p>16 kind of expertise.</p> <p>17 BY MR. LEWIS:</p> <p>18 Q. Yes, but one of the things</p> <p>19 that you said was important and a factor</p> <p>20 in evaluating a claim was the nature of</p> <p>21 the exposure, correct?</p> <p>22 MS. HARDING: Object to</p> <p>23 form.</p> <p>24 Go ahead.</p>	<p>1 coworkers who said a Monokote product</p> <p>2 and/or Zonolite product was present at</p> <p>3 this work site. And if the individual</p> <p>4 again, if the plaintiff himself recalled</p> <p>5 it and accurately described it in</p> <p>6 deposition testimony, that, in my</p> <p>7 opinion, would be better evidence and</p> <p>8 would be more persuasive to a jury than</p> <p>9 if a coworker who had no personal</p> <p>10 relationship with or didn't work</p> <p>11 alongside the plaintiff gave the same</p> <p>12 kind of testimony and it was an indirect</p> <p>13 connection between that.</p> <p>14 And also there was</p> <p>15 documentary evidence. If we had evidence</p> <p>16 in our files that our product was used at</p> <p>17 a particular building at a particular</p> <p>18 time period, then I would consider that</p> <p>19 higher quality evidence than if we had no</p> <p>20 documents, which was often the case, no</p> <p>21 documents actually which showed shipments</p> <p>22 or sale of our product for installation</p> <p>23 in a particular building and an</p> <p>24 individual coworker or person at the</p>

<p>Page 38</p> <p>CPO</p> <p>1 site, sometimes somebody who wasn't even 2 involved in the application of the 3 product, testified about it.</p> <p>4 Q. Have you ever been to Libby? 5 A. Yes, I have. 6 Q. How many times did you go 7 there? 8 A. I have been there twice. 9 Q. Did you go up to the mine? 10 A. No, I haven't been to the 11 mine. It was closed. 12 Q. Have you ever reviewed 13 documents concerning the kinds of 14 exposures at Libby? 15 A. Yes, I have. 16 Q. Libby claims did not involve 17 products claims; is that correct? 18 MS. HARDING: Object to 19 form. 20 MR. SCHIAVONI: Objection, 21 calls for a legal conclusion, 22 overly broad. 23 MS. HARDING: And it's 24 overly broad.</p>	<p>Page 40</p> <p>1 to form and let the witness 2 answer. 3 MR. LEWIS: The witness 4 knows exactly what I am asking 5 about here. 6 MS. HARDING: I don't know 7 that the witness knows what you 8 are talking about. 9 MR. SCHIAVONI: Are you 10 contending that all the policies 11 have same definitions for products 12 in asking this question? Because 13 when you say the witness 14 understands, I mean, you seem to 15 be coaching the witness. Is that 16 your contention, that every policy 17 has the same definition for 18 products? 19 MR. LEWIS: I am not even 20 referring to policies here, sir. 21 I am referring to common law, tort 22 law. Okay. Those kinds -- the 23 distinction is between products 24 claims --</p>
<p>Page 39</p> <p>1 MR. LIESEMER: I join in the 2 objection. 3 MR. SCHIAVONI: Lacks 4 foundation, overly ambiguous. 5 MR. LEWIS: Do you want the 6 question read back or do you 7 remember? 8 THE WITNESS: You should 9 probably read it back. 10 MR. LEWIS: I will just 11 restate it. 12 BY MR. LEWIS: 13 Q. Did Libby claims involve 14 products claims? 15 MS. HARDING: I am just 16 going to object to form in terms 17 of Libby claims. There is a wide 18 variety of Libby claims and a wide 19 variety of people. I don't 20 know -- 21 MR. LEWIS: Do you want me 22 to define Libby claims? That's 23 fine. 24 MS. HARDING: I will object</p>	<p>Page 41</p> <p>1 MR. SCHIAVONI: And what? 2 MR. LEWIS: -- injuries that 3 result from exposures to products 4 as opposed to injury in Libby that 5 related to exposure to the mining 6 and manufacturing of products or 7 sub-products. So I am not talking 8 about insurance policies right 9 here right now. I will later. 10 MR. JACOB COHN: If there is 11 a question, I object to the form. 12 MS. HARDING: I just object 13 to the form, and I think you can 14 answer. Did we get the question 15 back yet? 16 MR. LEWIS: I might take 17 eight hours here today if we keep 18 doing this. 19 MS. HARDING: Well, I don't 20 want to take eight hours, but I do 21 want to make sure the witness 22 understands the question. 23 MS. DeCRISTOFARO: And I 24 join.</p>

Page 54

1 A. The McDonald study, Amanda
2 study, 1986.

3 Q. Do you believe that the
4 exposures at the dry mill were
5 substantially similar to the exposures to
6 Monokote 3 on construction sites?

7 MS. HARDING: Object to form
8 and foundation. This witness is
9 not an expert, and I think it's an
10 improper question to ask this
11 witness.

12 But you can answer.

13 MR. LIESEMER: Object to the
14 form of the question.

15 MR. SCHIAVONI: On a more
16 fundamental basis, this witness is
17 a 30(b)(6) witness. He is not an
18 expert; he is not a fact witness.
19 And this is not a topic that is
20 designated.

21 MR. LEWIS: Yes, it is.

22 MR. SCHIAVONI: Really?
23 Which one?

24 MR. LEWIS: Just look a

Page 55

1 them, Counsel. I am not going to
2 answer your questions. I don't
3 have to answer to you. You make
4 your objections on the record, and
5 we will proceed. Or otherwise we
6 will be here forever.

7 MR. SCHIAVONI: If you can't
8 identify it --

9 MS. HARDING: Let's just
10 answer. I don't think he can
11 answer, but go ahead.

12 MR. LEWIS: Do you want to
13 the question read back? Let's
14 read the question back so he can
15 get a complete record.

16 (The reporter read from the
17 record as requested.)

18 MR. SCHIAVONI: I object to
19 form, and I object to Grace
20 offering this testimony. It's not
21 designated as corporate testimony.
22 If that's what Grace is going to
23 do, then you have my objection on
24 the record.

CPO

Page 56

1 MS. HARDING: Grace has
2 already made its objections, and
3 the witness can answer to the
4 extent that --

5 THE WITNESS: Again, I am
6 not an industrial hygienist, and I
7 really -- having my opinion on
8 whether they are quote/unquote
9 substantially similar, I don't
10 think I can do that.

11 They both involve asbestos
12 exposures. I have described in my
13 earlier testimony the conditions
14 were different, that one involved
15 the spray application of a
16 finished product at the
17 construction site, the Libby
18 exposures involved working at a
19 mine and mill operation. And the
20 data that does exist is available,
21 and I would rather rely on the
22 data that's available. And I
23 don't have that in front of me.

24 BY MR. LEWIS:

Page 57

1 Q. Do you recall when we
2 started this deposition that I asked you
3 to testify in the role of senior
4 litigation counsel, settling asbestos
5 claims?

6 A. Yes.

7 Q. We talked about that.

8 Do you agree that to perform
9 that role well for your employer, you had
10 to know something about asbestos
11 exposure?

12 A. Absolutely.

13 MS. HARDING: Object to
14 form.

15 Go ahead.

16 BY MR. LEWIS:

17 Q. And you differentiated --
18 let me withdraw that question.

19 In every case that you
20 looked at as an individual case, would
21 the nature and extent of the exposure be
22 fundamental to your evaluation of the
23 case?

24 MS. HARDING: Objection to

PP
Obj:
R

Page 58

Page 60

CPD 1 form.
 2 THE WITNESS: Yes. PP
 3 BY MR. LEWIS: Obj:
 4 Q. The Libby cases were largely R
 5 settled on a case-by-case basis, correct?
 6 MS. HARDING: Object to
 7 Libby cases. It's overly broad.
 8 But go ahead.
 9 THE WITNESS: Yes.
 10 BY MR. LEWIS:
 11 Q. Again, I am talking about
 12 Libby cases, as you earlier defined them,
 13 correct?
 14 A. Yes.
 15 MS. HARDING: Who defined
 16 them?
 17 MR. LEWIS: He agreed that
 18 we were talking about Libby cases,
 19 we were talking about cases that
 20 arose in Lincoln County, and he's
 21 testified that they were not --
 22 that they were manufactured --
 23 they were exposure cases different
 24 from Monokote exposures in the

1 five to ten cases.
 2 BY MR. LEWIS:
 3 Q. Was that with the Heberling
 4 firm?
 5 A. Yes.
 6 Q. There were other settlements
 7 where you settled cases, 10,000 claims at
 8 a time, correct?
 9 A. Yes. Not Libby cases.
 10 Cases in other parts of the country
 11 involving exposures to finished products.
 12 Q. Right.
 13 In those cases where you
 14 settled them 10,000 at a time or several
 15 thousand at a time, did you evaluate the
 16 quality of evidence for each individual
 17 claim in those cases?
 18 MS. HARDING: Object to
 19 form.
 20 THE WITNESS: Generally, the
 21 agreement set forth specific
 22 requirements for a case,
 23 qualifying materials, and we
 24 reviewed, individually reviewed

Page 59

Page 61

1 sense -- and that's what I am
 2 asking about.
 3 MS. HARDING: Okay. I
 4 object to the form. I think the
 5 terminology of "Libby cases" is
 6 overly broad.
 7 But go ahead.
 8 MR. SCHIAVONI: Can you just
 9 add to that those are a
 10 pre-petition cases, right?
 11 MR. LEWIS: Please answer
 12 the question.
 13 MR. SCHIAVONI: Objection to
 14 form, overly broad.
 15 MS. DeCRISTOFARO: I join.
 16 THE WITNESS: Prior to
 17 bankruptcy, the cases in Libby
 18 involving Libby employees and
 19 family members that were settled
 20 generally were settled
 21 individually, although in the
 22 period of time just prior to the
 23 bankruptcy, there were cases that
 24 were settled in small groups of

1 the qualifying materials that were
 2 submitted for each case before the
 3 case was settled.
 4 I have testified about this
 5 and how those settlement
 6 agreements or inventory
 7 settlements worked in both of my
 8 prior depositions in this case.
 9 BY MR. LEWIS:
 10 Q. Did you evaluate the
 11 exposure for each individual claim?
 12 A. Exposure --
 13 MS. HARDING: Object to
 14 form, and I am just going to
 15 not -- I am not going to instruct
 16 the witness not to answer, but he
 17 has had prior deposition testimony
 18 on how these cases were settled.
 19 And counsel has indicated that you
 20 have reviewed those transcripts,
 21 so I just would request that we
 22 try not to repeat the same
 23 questions that were asked
 24 previously since the witness has

16 (Pages 58 to 61)

Page 62

Page 64

1 already testified so we can try to
2 get through this today. I am not
3 going to -- with that, I am just
4 making a request.

5 MR. LEWIS: Could you read
6 back the question, please?

7 (The reporter read from the
8 record as requested.)

9 THE WITNESS: Well, the
10 qualifying materials that were
11 required under the settlement
12 agreements generally included
13 evidence of exposure, and that
14 would have been evaluated before
15 the settlement was made.

16 BY MR. LEWIS:

17 Q. As I recall your testimony,
18 you were highly critical of the nature of
19 evidence of exposure in most products
20 cases; is that true?

21 MS. HARDING: Object to
22 form.

23 THE WITNESS: I was critical
24 as to the credibility of the

1 who are experts in the area, a lot
2 this evidence seemed inconsistent
3 with it.

4 BY MR. LEWIS:

5 Q. It was inconsistent with
6 your own documents relating to where your
7 asbestos was located or Grace's asbestos
8 was located, correct?

9 MS. HARDING: Object to
10 form.

11 THE WITNESS: I don't know
12 if it was inconsistent because we
13 unfortunately didn't have a
14 complete set of documents which
15 would have told us where our
16 products were located.

17 It was often inconsistent
18 with what we knew about our
19 products and how they were used
20 and, you know, the product
21 formulas and the type of material
22 and the conditions that were being
23 used, they were being applied
24 under.

Page 63

Page 65

1 exposure evidence in many cases
2 historically that were being filed
3 in the period from -- well,
4 throughout the period of the
5 asbestos litigation, but
6 specifically in the late '90s and
7 early 2000.

8 BY MR. LEWIS:

9 Q. Did you feel that
10 plaintiffs' counsel were inventing
11 evidence for their clients?

12 MS. HARDING: Object to
13 form.

14 MR. LIESEMER: Object to
15 form.

16 THE WITNESS: Inventing
17 evidence implies something that --
18 I questioned the validity of the
19 process through which the evidence
20 was created. Whether it's
21 invented, I don't know. But there
22 are people's memories, and the way
23 memory works, in my experience as
24 a human being and also from people

1 BY MR. LEWIS:

2 Q. Okay. In the Finch
3 deposition that I read, I could not
4 understand how you went through the
5 information submitted for each claimant
6 in this inventory or mass settlements, I
7 would call them.

8 Did you do that
9 post-settlement or pre-settlement?

10 A. Post-settlement --

11 MS. HARDING: Object to
12 form.

13 THE WITNESS: -- generally.

14 BY MR. LEWIS:

15 Q. So if you settled 10,000
16 cases for \$50 million, as you did in one
17 case, does that mean that you paid the
18 \$50 million regardless of whether there
19 was proof, actual proof, in each
20 individual case?

21 MR. JACOB COHN: Object to
22 form.

23 MS. HARDING: Object to
24 form.

GR Obj:
R; H

PP Ctr. Page 66

Page 68

1 THE WITNESS: We paid them
2 50 million -- it varied from
3 settlement to settlement, quite
4 frankly. In certain situations,
5 we paid the money, but the
6 authority for the attorneys
7 representing the claimants to
8 release the money and pay the
9 money was subject to receiving
10 communications from us that the
11 qualifying materials met the
12 requirements of the agreement.

CPD BY MR. LEWIS:

14 Q. In any one of those
15 settlements, did Grace ever reject the
16 proof offer to support the individual
17 claims post settlement?

18 A. Yes.

19 Q. How many times did that
20 happen?

21 MS. HARDING: Object to
22 form.

23 THE WITNESS: It happened
24 more times than I could -- it

1 process in place.

2 And, again, I am -- and I
3 think as I have testified in the past,
4 there was a process was in place, and I
5 was confident that in the process that we
6 had in place was reviewing the qualifying
7 materials and we were paying places only
8 where they had submitted qualifying
9 materials consistent with the agreement.

10 I think my opinion as to the
11 relative credibility of some of the
12 qualifying materials, both medical and
13 exposure, I have testified before and
14 that is --

15 Q. You have so testified. I am
16 not going to get into that.

17 A. Okay.

18 Q. Do you recall the case, the
19 specific case where you settled 10,000
20 claims for \$50 million, the firm you
21 settled with?

22 A. I believe it was Baron &
23 Budd.

24 Q. Were those 10,000 claims

Page 67

Page 69

1 happened on a fairly regular
2 basis, although it wasn't a
3 substantial percentage of the
4 cases.

5 BY MR. LEWIS:

6 Q. So if you settle a case for
7 50 -- 10,000 claims for \$50 million, and
8 100 of those claims, for example -- I am
9 asking you to assume a hypothetical
10 here -- didn't show substantial proof of
11 exposure or disease, the proof was
12 defective in some manner, would the
13 amount allocated for those 100 claimants
14 be deducted from the settlement?

15 A. Yes.

16 Q. In every case?

17 A. Not in every case, but, I
18 mean, there were other -- it's difficult
19 to say. I mean, in the administration of
20 cases like that, you could assume a
21 certain percentage of cases weren't going
22 to meet the requirements in valuing the
23 cases. There are all kinds of ways you
24 could do it, but there was definitely a

1 just asbestosis claims or were there
2 cancer and mesos in those claims?

3 A. There were cancers and
4 mesos.

5 Q. Did the settlement provide
6 that the mesos would get a different
7 amount than the asbestosis claims?

8 A. As I recall, yes.

9 Q. Who made the decision as to
10 who got what, how much each claimant was
11 individually paid? Did Grace have any
12 input in that?

13 MS. HARDING: Just object to
14 the extent it calls for
15 attorney-client work product
16 information. And to the extent --
17 I instruct the witness not to
18 answer to the extent that it calls
19 for that. To the extent that it
20 doesn't, you can answer.

21 MR. LEWIS: I think the
22 that's a fair objection because
23 the question is not very precise.
24 I will rephrase the question.

OBS Obj: H; R

<p style="text-align: right;">Page 74</p> <p>1 disease of each individual claimant 2 involved in an inventory settlement 3 before settling the case? 4 MS. HARDING: Object to 5 form. 6 Go ahead. 7 THE WITNESS: Well, there is 8 a couple things. One is that, as 9 I said, there were medical 10 documentation requirements in the 11 inventory settlements, and we 12 reviewed the medical evidence that 13 was submitted as part of the 14 qualifying materials to make sure 15 that it met the requirements of 16 the particular inventory 17 settlement. 18 The other thing you need to 19 keep in mind is that in the 20 evolution of the litigation, many 21 of the inventory settlements, if 22 not most, involved or were agreed 23 to after a substantial amount of 24 time in litigation with the</p>	<p style="text-align: right;">Page 76</p> <p style="color: red;">GR Obj: R; H</p> <p>1 Q. You listed the four factors 2 that you used to decide whether a 3 claim -- what settlement value was 4 assigned to a claim. 5 A. Right. 6 Q. Did you have information as 7 to all of these four factors for each 8 claimant in inventory settlements before 9 you entered into the settlement 10 agreement, the inventory settlement 11 agreement? 12 MS. HARDING: Object to 13 form. 14 If you can answer, go ahead. 15 THE WITNESS: Again, not 16 necessarily for all of the 17 claimants, but we had procedures 18 in the settlement agreement itself 19 that required that kind of 20 information to be submitted to us. 21 And, as I said before -- and I 22 feel was responsive -- we 23 generally had a course of dealing 24 and history with the particular</p> <p style="color: blue;">PP Gr</p>
<p style="text-align: right;">Page 75</p> <p>1 particular law firm, so we were 2 familiar with their clientele, the 3 disease that was involved, the 4 quality of the medical evidence in 5 terms of the specific doctors that 6 were submitting it and so on. 7 MR. LEWIS: To the extent 8 that that response is 9 nonresponsive so my question, I 10 move to strike it. 11 BY MR. LEWIS: 12 Q. I am asking you about what 13 knowledge you had concerning the 14 seriousness of the disease of each 15 individual claimant before you entered 16 into these inventory settlements. And I 17 am not arguing with you. Did you 18 understand that was my inquiry? 19 MS. HARDING: Object to 20 form. I think it's confusing. 21 Are you talking about their 22 complaints? I don't understand 23 the question, and I object. 24 BY MR. LEWIS:</p>	<p style="text-align: right;">Page 77</p> <p style="color: red;">GR Obj: H</p> <p>1 firm so we knew something about 2 the clients and we knew something 3 about the quality of evidence we 4 expected to see as far as exposure 5 and the medical condition of the 6 plaintiff. 7 BY MR. LEWIS: 8 Q. So does that mean if Grace 9 had a good relationship with a particular 10 firm, that firm's claimants got to settle 11 their cases and other unfamiliar 12 plaintiffs' lawyers couldn't settle their 13 cases? 14 MR. LIESEMER: Object to the 15 form. 16 MS. HARDING: Object to the 17 form. 18 THE WITNESS: No. 19 BY MR. LEWIS: 20 Q. Well, for example, you had a 21 good relationship with Worthington, 22 right? 23 MS. HARDING: Object to 24 form.</p> <p style="color: blue;">PP Gr</p> <p style="color: red;">OBS Obj: H</p>

Page 126

Page 128

1 MR. LEWIS: How what? I am
2 sorry. I couldn't hear that. I
3 am hard of hearing.

4 MR. SCHIAVONI: How
5 claims --

6 MS. BAER: He's criticizing
7 my city and its ethical
8 reputation.

9 MR. LEWIS: That was a joke.
10 I get it now.

11 BY MR. LEWIS:

12 Q. Did you study the TDP that's
13 part of the Reorganization Plan in
14 preparation for your deposition today?

15 MS. HARDING: Object to the
16 word "study," but go ahead.

17 THE WITNESS: Yes, I did.

18 BY MR. LEWIS:

19 Q. You reviewed it?

20 A. I reviewed it.

21 Q. Were you part of the team
22 that helped formulate the TDP?

23 A. I reviewed --

24 MS. HARDING: Object to

1 the process and the original
2 draft, was that either the general
3 counsel or Richard Finke asked me
4 to take a look at it for Grace.

5 BY MR. LEWIS:

6 Q. Did Grace have any
7 significant input on the TDP?

8 MR. LIESEMER: Object to the
9 form.

10 MS. HARDING: Object to the
11 form.

12 THE WITNESS: I don't recall
13 whether we had any significant
14 input in terms of the draft that
15 was circulated, but we certainly
16 were given an opportunity to
17 provide comments.

18 BY MR. LEWIS:

19 Q. What, if any, comments did
20 you provide concerning the TDP?

21 A. I don't recall.

22 Q. Who else would have reviewed
23 the TDP on behalf of Grace?

24 MS. HARDING: Object to

Page 127

Page 129

1 form.

2 THE WITNESS: -- it on
3 behalf of Grace at the request of
4 the general counsel when it was
5 being distributed among the Plan
6 proponents, but I wouldn't say
7 that I was involved in drafting
8 it. That was something that was
9 done by, as I recall, the Asbestos
10 Creditors Committee and the Future
11 Claimants' Representative.

12 BY MR. LEWIS:

13 Q. I will get back to that more
14 later.

15 So it was drafted by the
16 ACC, correct?

17 MR. LIESEMER: Object to
18 form.

19 MR. SCHIAVONI: Object.

20 MS. HARDING: Object to form
21 in terms of foundation.

22 THE WITNESS: That's my
23 understanding, but, again, my
24 involvement was that while after

1 foundation.

2 MR. LEWIS: If you know.

3 THE WITNESS: Counsel for
4 Grace in the bankruptcy.

5 BY MR. LEWIS:

6 Q. Do you know if counsel in
7 the bankruptcy offered any comments to
8 the ACC's proposed TDP?

9 A. I don't recall.

10 Q. You are identified,
11 according to the document provided by
12 your counsel, as the 30(b)(6)
13 representative on development of the TDP,
14 including negotiations, other discussions
15 between or within the Plan proponents and
16 preparation of documents, including
17 drafts.

18 Do you have knowledge of
19 what's identified there?

20 MS. HARDING: I am just
21 going to object, Counsel, to the
22 line of questioning in that
23 category, and the objections are
24 set out in full in the objection

Page 130

1 we filed with the court. And I am
2 not going to list them all here,
3 but they are listed in that
4 category.

5 And as we have said in other
6 depositions we listed somebody for
7 every category, noting in our
8 objections and in our
9 communications with counsel, that
10 we didn't believe that all
11 categories were proper categories
12 for inquiry in the 30(b)(6)
13 deposition, as we believe this
14 category is not.

15 MR. LEWIS: Do you direct
16 the witness not to answer any
17 questions in this category,
18 development of the --

19 MS. HARDING: I have allowed
20 the witness to answer, and he's
21 answered he didn't know. I just
22 wanted to note that for the record
23 to the extent that you are
24 complaining that he is not --

CPD

Page 132

1 question.

2 MS. HARDING: Object to the
3 form, and I think the witness has
4 already asked and answered.

5 THE WITNESS: I think I may
6 have participated in a phone call
7 where drafts were discussed in
8 discussions with ACC and FCR
9 representatives and Grace and
10 Grace's counsel, but I don't have
11 a specific recollection.

12 BY MR. LEWIS:

13 Q. Do you have any knowledge of
14 the preparation of the documents,
15 including the drafts of the TDP?

16 A. Again, I described my
17 involvement and the knowledge I have. I
18 was provided with copies of the drafts
19 early on in the process and reviewed them
20 and advised Grace and Grace's counsel and
21 my comments based on my experience in
22 asbestos litigation. But the primary
23 drafting role was with the ACC and FCR,
24 as it probably should be.

PP
ChrPP
Obj.
R;
408

Page 131

1 MR. LEWIS: I am not
2 complaining about anything. I am
3 just asking questions.

4 I wanted to ask more
5 questions in this area, and I was
6 asking you if you are going to
7 direct -- you are claiming
8 privilege?

9 MS. HARDING: I am not going
10 to have a blanket objection, but I
11 wanted to remind counsel of that
12 objection. And then you can ask
13 questions, and we can go from
14 there.

15 BY MR. LEWIS:

16 Q. So your involvement in the
17 development of the TDP was, as you
18 described earlier? You just reviewed it,
19 correct?

20 A. Yes, a draft.

21 Q. Were there any negotiations
22 between you and the ACC concerning the
23 language of the TDP?

24 MR. LIESEMER: Object to the

CPD

CPD

PP
Obj.
R;
408

Page 133

1 Q. Why do you say it probably
2 should be?

3 MS. HARDING: Object to
4 form.

5 THE WITNESS: Because their
6 constituency will ultimately be
7 the beneficiaries of the Trust.

8 BY MR. LEWIS:

9 Q. Because, to Grace, Grace
10 will pay the same amount under the
11 settlement regardless of how the TDP is
12 drawn, correct?

13 MR. LIESEMER: Object to the
14 form.

15 MS. HARDING: Object to the
16 form.

17 THE WITNESS: I guess that's
18 probably part of it but, again,
19 the terms of their constituency,
20 the ultimate beneficiaries of the
21 Trust and the way the Trust
22 operates and the distribution
23 procedure is something that they
24 probably -- the asbestos claimants

PP
Obj.
R;
408PP
Obj.
R;
408

OBS Obj: R, H

<p style="text-align: right;">Page 134</p> <p>1 and the Future Claimants'</p> <p>2 Representative have a direct</p> <p>3 interest in.</p> <p>4 BY MR. LEWIS: PP Ctr. GR Obj: H</p> <p>5 Q. Did you review any TDPs in</p> <p>6 other asbestos bankruptcy settlements?</p> <p>7 A. I have over the course of my</p> <p>8 career. I had reviewed them beforehand.</p> <p>9 Q. Did you review them in order</p> <p>10 to provide input concerning the TDP in</p> <p>11 this case?</p> <p>12 A. I think I may have pulled a</p> <p>13 couple out and taken a look at when the</p> <p>14 issue of the TDPs in this case came up.</p> <p>15 I also -- you know, early on in</p> <p>16 bankruptcies, Grace was a codefendant and</p> <p>17 participated, and so I probably was</p> <p>18 concerned at that point with what Trust</p> <p>19 Distribution Procedures in earlier</p> <p>20 bankruptcies said about, you know,</p> <p>21 codefendant claims and so on.</p> <p>22 Q. When you say "probably," do</p> <p>23 you mean that's one of the reasons you</p> <p>24 would have reviewed them?</p>	<p style="text-align: right;">Page 136</p> <p>1 disease categories and the GR Obj: H; R</p> <p>2 criteria were consistent with the</p> <p>3 understanding of the</p> <p>4 asbestos-related disease and</p> <p>5 myself as a non-expert, an</p> <p>6 attorney involved in resolving</p> <p>7 cases for many years, that they</p> <p>8 accurately or at least were</p> <p>9 consistent with the medical</p> <p>10 criteria that were used in</p> <p>11 evaluating cases by Grace and by</p> <p>12 other defendants in the asbestos</p> <p>13 litigation.</p> <p>14 BY MR. LEWIS:</p> <p>15 Q. What is your understanding</p> <p>16 -- as a person primarily responsible for</p> <p>17 claims in Libby from 1985 to the date of</p> <p>18 the bankruptcy filing, what is your</p> <p>19 understanding of the nature of the</p> <p>20 disease in Libby?</p> <p>21 MS. HARDING: Object to form</p> <p>22 in terms of nature of disease.</p> <p>23 But to the extent you can</p> <p>24 answer, go ahead.</p>
<p style="text-align: right;">Page 135</p> <p>1 A. In the past, yes. PP Ctr. GR Obj: H</p> <p>2 Q. Okay. Do you understand the</p> <p>3 disease categories under the TDP that's</p> <p>4 been offered by this Plan?</p> <p>5 A. Yes.</p> <p>6 Q. Have you reviewed the severe</p> <p>7 pleural disease category under the TDP?</p> <p>8 A. Yes, I have.</p> <p>9 Q. Did you offer any input on</p> <p>10 behalf of Grace concerning the severe</p> <p>11 pleural disease category under the TDP?</p> <p>12 MS. HARDING: I will let you</p> <p>13 answer if you recall any input.</p> <p>14 But in terms of actual</p> <p>15 negotiations and discussions about</p> <p>16 the drafting, we are going to</p> <p>17 avoid those.</p> <p>18 THE WITNESS: Yeah, I don't</p> <p>19 recall, and I think that, as a</p> <p>20 general rule, the issue of the</p> <p>21 disease category and Grace's view</p> <p>22 of it would be that it's primarily</p> <p>23 an issue for experts. And my</p> <p>24 recollection was, again, that</p>	<p style="text-align: right;">Page 137</p> <p>1 THE WITNESS: That the --</p> <p>2 MR. SCHIAVONI: No</p> <p>3 foundation, calls for privileged</p> <p>4 information, vague, ambiguous.</p> <p>5 Do you want to know what you</p> <p>6 are telling him and what you are</p> <p>7 alleging? The whole thing is sort</p> <p>8 of --</p> <p>9 MR. LEWIS: Counsel, that's</p> <p>10 a wide open question. It's a</p> <p>11 perfectly proper question.</p> <p>12 Would you please read it</p> <p>13 back?</p> <p>14 (The reporter read from the</p> <p>15 record as requested.)</p> <p>16 MR. LIESEMER: I object to</p> <p>17 the form of the question. No</p> <p>18 foundation.</p> <p>19 MR. SCHIAVONI: The basis is</p> <p>20 there is no personal knowledge of</p> <p>21 this witness. So you want him to</p> <p>22 just speculate and say what the</p> <p>23 plaintiffs' lawyers have told him?</p> <p>24 Fine. That's what you will get.</p>

Page 150

1 so, but I don't think my opinion
2 on that subject, you know, is
3 what's relevant here.

4 But, again, I don't think
5 so. I think it sets forth the
6 procedure for the handling of
7 asbestos claims by the proposed
8 Grace Trust that handles similarly
9 situated claims in kind of a
10 uniform manner.

11 BY MR. LEWIS:

12 Q. Given that claims settlement
13 history for Libby as compared to other
14 claimants, do you consider the Libby
15 claims substantially similar to those
16 other claimants with respect to
17 settlement value?

18 MR. LIESEMER: Object to
19 form.

20 MS. HARDING: Object, again,
21 to the broad characterization of
22 Libby claims.

23 But to the extent you can
24 answer, go ahead.

Page 151

1 MR. SCHIAVONI: Apples and
2 oranges, where people live rather
3 than what their diseases are.

4 MR. LIESEMER: Object to the
5 form, no foundation.

6 BY MR. LEWIS:

7 Q. I direct your attention back
8 to Exhibit-1, 1625.

9 A. Uh-huh.

10 Q. Let's go with Libby
11 Employees. You categorize Libby
12 employees, and you described how you
13 categorized those correctly, right?

14 A. Yes.

15 Q. And Libby employees included
16 people who worked there and family
17 members were claimed to be exposed to
18 asbestos as a result of the worker
19 bringing the asbestos home, correct?

20 A. Yes.

21 Q. Do you think those Libby
22 claimants cases that settled for an
23 average of 268,000 are substantially
24 similar to Monokote claims?

Page 152

1 MR. LIESEMER: Object to the
2 form.

3 MS. HARDING: Objection to
4 form, substantially similar.

5 MR. SCHIAVONI: Vague,
6 ambiguous, incomprehensible,
7 incomplete hypothetical and
8 comparison.

9 THE WITNESS: But the
10 differences, to the extent they
11 exist, are reflected in the Trust
12 distribution procedure in valuing
13 the claims in the Trust
14 Distribution Procedure. It sets
15 forth medical criteria; it sets
16 forth multipliers in terms of
17 values based on exposure criteria
18 which, as I read -- or the
19 percentage of total exposure,
20 which I read many of the Libby
21 claimants would fit within.

22 So I think that to the
23 extent there are differences, the
24 Trust Distribution Procedures in

OBS Obj: H;R

PP
Chr

GR Obj: H;R Page 153

1 the current Plan adequately
2 addressed those differences.

3 MR. LEWIS: Could you read
4 back the question, please?

5 (The reporter read from the
6 record as requested.)

7 MR. LEWIS: Yes or no, if
8 you can answer that question yes
9 or no.

10 MS. HARDING: Object to
11 form. I think it's unanswerable.
12 Libby claims meaning what? What
13 exposure? What disease? Monokote
14 claims meaning what, when, where,
15 what exposure? It's absolutely --
16 he's doing his best to answer your
17 question, but it's impossible to
18 answer.

19 MR. LIESEMER: I join the
20 objection.

21 MR. SCHIAVONI: I have a
22 different objection. It's called
23 asked and answered. You asked the
24 same exact question, you got an

OBS Obj: H;R

PP
Chr

<p style="text-align: right;">Page 154</p> <p>1 answer, and now you have to move 2 on. 3 MR. LEWIS: He never 4 answered the question, sir. 5 MR. SCHIAVONI: You are not 6 happy with it. 7 MS. HARDING: I think he 8 tried very hard to answer a 9 question that is... 10 BY MR. LEWIS: 11 Q. Okay. Let me rephrase the 12 question slightly. I am talking about 13 Libby employees here. 14 As you categorize them in 15 Exhibit-1, 91-1625 -- 16 A. Yes. 17 Q. -- are those claims 18 substantially similar to the Construction 19 & Other claims set forth on line 38 of 20 that document? 21 MS. HARDING: Object to 22 form. Again, I think it's a very 23 important objection. It's overly 24 broad. It assumes facts not in</p> <p style="position: absolute; left: 410px; top: 210px;">GR Obj: R;H</p> <p style="position: absolute; left: 360px; top: 240px;">PP Ctr</p> <p style="position: absolute; left: 470px; top: 240px;">OBS Obj: R;H</p>	<p style="text-align: right;">Page 156</p> <p>1 I object. No one in the room 2 understands. 3 MS. HARDING: Sorry, Jay. 4 MR. LEWIS: Do you want to 5 answer the question please or we 6 can have it read back again. GR Obj: R;H 7 THE WITNESS: I do feel that 8 I answered the question, again. 9 There are obviously 10 differences. There are 11 differences between every claim. 12 One claim of 328,000 claims that 13 were filed against Grace, there 14 were differences from one to the 15 other. 16 The Libby claims, in terms 17 of the value, the values are 18 reported here. But to talk 19 about -- there are certainly 20 similarities. They are all 21 asbestos personal injury claims 22 alleging pulmonary and lung 23 problems and mesothelioma, lung 24 cancer, pleural disease,</p> <p style="position: absolute; left: 860px; top: 200px;">OBS Obj: R;H</p> <p style="position: absolute; left: 930px; top: 190px;">PP Ctr</p>
<p style="text-align: right;">Page 155</p> <p>1 evidence. It makes comparisons 2 between claims without giving any 3 characteristics of the claims, 4 disease, levels of exposure, time 5 periods, all of those things. I 6 think it's impossible to answer. 7 If you think you can answer 8 it, Jay, or do your best, go 9 ahead. I think it's asked and 10 answered, but go ahead. 11 MS. BAER: It also assumes 12 that you know what the definition 13 of "substantially similar" is, 14 which has not been defined here. 15 MR. LEWIS: He's the one 16 that used the term "substantially 17 similar." I just embraced it. It 18 was his word. 19 MS. HARDING: In any 20 event -- 21 MR. LEWIS: So that's why I 22 am entitled to inquire about it. 23 MR. SCHIAVONI: You don't 24 understand what it means, either.</p>	<p style="text-align: right;">Page 157</p> <p>1 asbestosis resulting from exposure 2 to asbestos, and there are 3 substantial similarities between 4 the claims. 5 And, in my opinion, the 6 Trust Distribution Procedures, as 7 I read them, deal with these 8 differences in terms of value and 9 by providing, for example, an 10 exposure if a person is exposed 11 substantially to Grace products by 12 a five or eight times multiplier 13 of the value, they provide for 14 litigation in the tort system, 15 they provide for, you know, again, 16 both the forum and the criteria to 17 differentiate between different 18 kinds of cases. And the Libby 19 cases are asbestos personal injury 20 cases, and there are differences 21 in severity. 22 So the extent to which the 23 Libby cases are different, the 24 Trust Distribution Procedures</p> <p style="position: absolute; left: 750px; top: 495px;">GR Obj: R;H</p> <p style="position: absolute; left: 860px; top: 520px;">OBS Obj: R;H</p> <p style="position: absolute; left: 920px; top: 510px;">PP Ctr</p>

<p style="text-align: right;">Page 158</p> <p style="color: red;">GR Obj: R;H</p> <p style="color: blue;">PP Ctr</p> <p style="color: red;">OBS Obj: R;H</p> <p>1 address those differences.</p> <p>2 BY MR. LEWIS:</p> <p>3 Q. Under the TDP, would the</p> <p>4 average Libby claim be valued anywhere</p> <p>5 near \$268,000 per claim?</p> <p>6 MS. HARDING: Object to the</p> <p>7 form and to the use of the term</p> <p>8 "average Libby claim." I think</p> <p>9 that's the problem with the entire</p> <p>10 deposition.</p> <p>11 But go ahead.</p> <p>12 MR. LIESEMER: Object to the</p> <p>13 form. Mr. Hughes is not going to</p> <p>14 be valuing claims under the TDP.</p> <p>15 It would be the Asbestos PI Trust.</p> <p>16 MR. LEWIS: Are they here</p> <p>17 today? Is the PI Trust here,</p> <p>18 anybody on their behalf?</p> <p>19 (No response.)</p> <p>20 THE WITNESS: Well, the PI</p> <p>21 Trust doesn't exist.</p> <p>22 MR. LEWIS: I know.</p> <p>23 THE WITNESS: And we don't</p> <p>24 know how they will be valued and</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Why does a TDP value</p> <p>2 mesothelioma claims at \$180,000 if the</p> <p>3 average settlement for mesothelioma</p> <p>4 claims system-wide for Grace was on the</p> <p>5 order of \$90,000?</p> <p>6 MS. HARDING: Object to</p> <p>7 form, foundation.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: I think that</p> <p>10 the values that are included in</p> <p>11 the TDP are based upon the Grace</p> <p>12 historical settlement averages.</p> <p>13 But I am not familiar with the</p> <p>14 methodology in terms of how the</p> <p>15 relationship between those and --</p> <p>16 it's my understanding that it was</p> <p>17 done with the guidance of experts</p> <p>18 in the area, and I am not an</p> <p>19 expert in terms of the</p> <p>20 relationship between the two</p> <p>21 numbers.</p> <p>22 BY MR. LEWIS:</p> <p>23 Q. So we have an average</p> <p>24 settlement for mesothelioma that was 90,</p>
<p style="text-align: right;">Page 159</p> <p>1 the average is. So for me to</p> <p>2 answer your question would involve</p> <p>3 several layers of speculation, and</p> <p>4 I am not going to do it, quite</p> <p>5 frankly.</p> <p>6 BY MR. LEWIS:</p> <p>7 Q. Your average settlement for</p> <p>8 all mesotheliomas was on the order of</p> <p>9 \$90,000, correct?</p> <p>10 MR. LIESEMER: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: Pre-petition?</p> <p>13 BY MR. LEWIS:</p> <p>14 Q. Pre-petition.</p> <p>15 A. That sounds right, but I</p> <p>16 don't have the date right in front of me.</p> <p>17 Q. Why does a TDP evaluate</p> <p>18 mesotheliomas at \$180,000 per claim --</p> <p>19 MS. HARDING: Object to</p> <p>20 form.</p> <p>21 MR. LEWIS: Can I finish?</p> <p>22 MS. HARDING: I am sorry. I</p> <p>23 thought you were finished. Sorry.</p> <p>24 BY MR. LEWIS:</p>	<p style="text-align: right;">Page 161</p> <p>1 but under the TDP, you get 180. And you</p> <p>2 got an average settlement in Libby of</p> <p>3 268, and under the TDP, the most they</p> <p>4 could ever get, if they don't have</p> <p>5 mesothelioma, is 50,000 times the payment</p> <p>6 percentage? Is that what you understand</p> <p>7 the TDP to say?</p> <p>8 MS. HARDING: Object to</p> <p>9 form.</p> <p>10 MR. LIESEMER: Object to the</p> <p>11 form of the question, speculative,</p> <p>12 no foundation.</p> <p>13 MS. HARDING: I think it is</p> <p>14 improperly characterized.</p> <p>15 BY MR. LEWIS:</p> <p>16 Q. You understand the question,</p> <p>17 right?</p> <p>18 A. If you could repeat the</p> <p>19 question, I would appreciate it.</p> <p>20 MR. LEWIS: Why don't we</p> <p>21 read it back? And I will withdraw</p> <p>22 it, if I think it's an unfair</p> <p>23 question.</p> <p>24 (The reporter read from the</p>